

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE 1996 SESSION

<p>FILED</p> <p>July 16, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

STATE OF TENNESSEE,

Appellee,

V.

SHAWN E. DODD,

Appellant.

)
) C.C.A. No. 03C01-9508-CC-00214
)
) Blount County
)
) Honorable D. Kelly Thomas, Jr., Judge
)
) (DUI; Leaving the Scene of an Accident;
) Failure to Yield to an Emergency Vehicle;
) Flight to Avoid Arrest; Reckless Driving)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
 Judge

OPINION

The appellant, Shawn E. Dodd, pled guilty to driving under the influence, leaving the scene of an accident, failure to yield to an emergency vehicle, flight to avoid arrest, and reckless driving. He received an effective sentence of 24 months with all but the first six months suspended.¹ On appeal, he argues that the trial court erred in denying his request for full probation.

The trial judge denied the appellant's request for full probation based upon the following findings: (1) the appellant had a long history of serious criminal behavior; (2) he was a danger to himself and to the public; (3) he had continually violated the law even after these charges arose; (4) he had a history of violating terms of a probationary release;² (5) he committed these offenses while in the custody of the Department of Youth Development; and (6) measures less restrictive than confinement have previously been unsuccessfully applied.³ The trial judge then carefully tailored a sentence that he believed would best serve the appellant's need for rehabilitation.

Upon review, we find no error of law mandating reversal. Moreover, upon viewing the appellant's demeanor while testifying, the trial judge was in a better position to assess the appellant's potential for rehabilitation. The trial court's sentence is, therefore, affirmed in accordance with Tenn. R. Ct. Crim. App., Rule 20.

¹The first six months of appellant's sentence was ordered to be served as follows: (1) the first 90 days will be served day for day, (2) the next 30 days will be served in an inpatient treatment program, and (3) the last 60 days, he will return to jail but be eligible for work release.

²The appellant testified that he was placed "on probation and [he] continued to be on probation because [he] couldn't . . . pass [his] drug test."

³The appellant had previously been placed on probation and admitted to a long term alcohol and drug treatment facility in Kingsport. Following six months of treatment at the Kingsport facility, the appellant spent eight months in a Knoxville halfway house. During his stay at the halfway house, the appellant continued to use marijuana and failed several drug screens. The appellant also tested positive for both marijuana and cocaine following his presentencing interview. At his sentencing hearing, the appellant claimed that he had not used cocaine, drugs or alcohol for a week.

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

GARY R. WADE, Judge